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IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

In Re HTOO et al.)

Appellants)

Application No. 10/077,413

BRIEF FOR APPELLANTS

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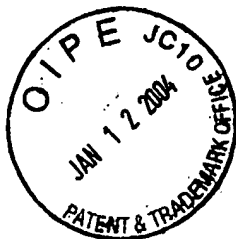


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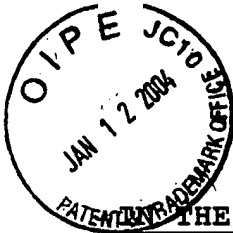
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THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| <p>In Re Application Of: Thurein M. Htoo, et al</p> <p>Serial No: 10/077,413 Filed: February 15, 2002 Title: FLASK AND METHOD FOR DRYING BIOLOGICAL MATERIALS</p> | <p>Examiner: Rinehart, Kenneth</p> <p>Art Unit: 3749</p> <p>Atty. Docket No.: 800189-11 (6829-60483)</p> |
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I. APPELLANTS' BRIEF ON APPEAL

Dear Sir:

This is an appeal from the final rejection of June 10, 2003 finally rejecting Claims 1-5, 9-11, 13, 14, 16-18, 25, 26, 30-32, 36-44, 49-50, and 55-56.

II. Real Party and Interest

The Regents of the University of California, assignee of assignors' (i.e., the inventors: Thurein M. Htoo, John H. Crowe, Ann E. Oliver, and Fern Tablin) entire right, title and interest in the subject patent application.

III. Related Appeals and Interference

To the best of the undersigned attorney's present knowledge and belief, there are no other Appeals or Interferences known at this time which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending Appeal.

IV. Status of All Claims

Claims 1-61 are pending in the application.

Claims 19-24, 27-29, 51-54 and 57-61 are allowed.

Claims 1-5 stand rejected under 35 U.S.C. Section 102(b) as being unpatentable over U.S. Patent No. 6,095,356 to Rits.

Claims 9-11, 16-18 and 44 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent No. 5,732,837 to Jones in view of Rits.

Claims 13 and 14 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over Jones in view of Rits as applied to Claim 10, and further in view of U.S. Patent No. 5,689,895 to Sutherland et al.

Claims 25, 26, 30-32, 36-43, 49-50, and 55-56 stand rejected under 35 U.S.C. 112, first paragraph, because allegedly these claims contain "subject matter which was not described in the specification in such a way as to

reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention."

Claims 6-8, 12, 15, 33-35, and 45-48 stand objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Appellants are appealing herein the rejection of Claims 1-5, 9-11, 13, 14, 16-18, 25, 26, 30-32, 36-44, 49-50, and 55-56.

V. Status of All Amendments Filed Subsequent to Final
Rejection

On August 11, 2003 Applicants filed an Amendment after the June 10, 2003 final rejection. The examiner entered the August 11, 2003 Amendment.

VI. Concise Summary of Embodiments of the Invention

Embodiments of the present invention provide flask **10** having a bottom **12**, a rear wall **14** and side walls **16** and **18** bound to the bottom **12**, and a front wall assembly **20** bound to the bottom **12** and the side walls **16** and **18**. A top **22** is secured to the rear wall **14**, to the side walls **16** and **18**, and to the front wall assembly **20**. The top **22** has an opening **30** which are covered by filters **34** and **36** in a superimposed fashion, such that respective perimeters **34a** and **36a** associated with the filters **34** and **36** extend beyond the perimeter **32** of the opening **30** for structural support purposes, as best shown in Figs. 6 and 7.

Filter **34** is preferably a bacteria-filtering filter which precludes the entry of bacteria into the flask **10**. Filter **36** is prefilter, preferably for filtering large foreign particles, such as dust. Filter **36** is preferably a support membrane type filter which increases the structural rigidity of the combination of the superimposed filters **34** and **36**. Thus, filter **34** has a higher flexibility than filter **36**. There is no absorbing material positioned between filter **34** and filter **36**. In operation, filter **34**

would typically move or flex toward and/or against filter

36.

The flask **10** may be used for any suitable purpose, such as, by way of example only, for processing substances (e.g., drying substances).

VII. Concise Statement of All Issues Presented for Review

(i) Whether or not Claims 1-5 are anticipated under 35 U.S.C. Section 102(b) over U.S. Patent No. 6,095,356 to Rits.

(ii) Whether or not the Examiner has established a *prima facie* case for rejecting Claims 9-11, 16-18 and 44 under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent No. 5,732,837 to Jones in view of Rits.

(iii) Whether or not the Examiner has established a *prima facie* case for rejecting Claims 13 and 14 under 35 U.S.C. Section 103(a) as being unpatentable over Jones in view of Rits as applied to Claim 10, and further in view of U.S. Patent No. 5,689,895 to Sutherland et al.

(iv) Whether or not the Examiner has established a *prima facie* case for rejecting Claims 25, 26, 30-32, 36-43, 49-50, and 55-56 under 35 U.S.C. § 112, first paragraph, because allegedly these claims contain "subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art

that the inventor(s), at the time the application was filed, had possession of the claimed invention."

VIII. Grouping of Claims for Each Ground of Rejection Which
Appellants Contest

Independent Claim 1, and dependent Claims 2-5 which depend on independent Claim 1, are rejected under 35 U.S.C. Section 102(b) over U.S. Patent No. 6,095,356 to Rits.

Independent Claim 9, as well as dependent Claim 44 which depends on independent Claim 9, and independent Claim 10, as well as dependent Claims 11 and 16-18 which depend on independent Claim 10, are rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent No. 5,732,837 to Jones in view of Rits.

Dependent Claims 13 and 14 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over Jones in view of Rits as applied to Claim 10, and further in view of U.S. Patent No. 5,689,895 to Sutherland et al.

Dependent Claims 25 and 26, which depend on independent Claim 19; independent Claim 30, as well as dependent Claims 31-32, 36 which depend on independent Claim 30; independent Claim 37, as well as dependent Claims 38-41 which depend on independent Claim 37; dependent

Claims 42 and 43 which depend on independent Claim 1;
dependent Claims 44, 49, 50 which depend on independent
Claim 9; dependent Claim 55 which depends on independent
Claim 51; and dependent Claim 56:

are all rejected under 35 U.S.C. 112, first
paragraph, because allegedly these claims
contain "subject matter which was not described
in the specification in such a way as to
reasonably convey to one skilled in the relevant
art that the inventor(s), at the time the
application was filed, had possession of the
claimed invention."

IX. Arguments by Appellants with Respect to Each
of the Issues Presented

A. In re the Rejection of Claims 1-5 under 35 U.S.C.

Section 102(b)

Claim 1 Stands Separately Patentable:

In rejecting an embodiment of the invention as claimed in independent Claim 1 under 35 U.S.C. § 102(b) by U.S. Patent No. 6,095,356 to Rits, the Examiner has alleged in his August 8, 2003 Advisory Action that: "Given the claim its broadest reasonable interpretation the Rits reference reads on the claim language." The Examiner's prefatory statement "Given the claim its broadest reasonable interpretation" is only partially complete in that the Examiner should have added the words "consistent with the specification" in accordance with *In re Barr, Williams, and Whitmore*, 444 F.2d 588, 170 U.S.P.Q. 330, 335 (C.C.P.A. 1971) which held that "unpatented claims are accorded the broadest reasonable interpretation consistent with the specification." An interpretation of a claim which limits it to the relationship disclosed in the

specification is consistent with the principle that, where susceptible to more than one construction, that one will be adopted which will preserve to the patentee his actual invention. *Leesona Corporation v. United States*, 185 U.S.P.Q. 156, 164 (U.S. Ct. Cl. 1975). Furthermore, the fact that claims receive their broadest reasonable meaning during the patent examination process does not relieve the PTO of its essential task of examining the entire patent disclosure to discern the meaning of claim words and phrases. *Rowe v. Dror*, 12 F.3d 473, 42 U.S.P.Q.2d 1550, 1555 (Fed. Cir. 1997). Also, in a proceeding in the PTO, drawings "may be used like the written specification to provide evidence relevant to claim interpretation." *Mentor Graphics Corp. v. Quickturn Design Systems Inc.* 44 U.S.P.Q.2d 1621, 1625 (Oreg. 1997).

Applicants respectfully submit that the embodiment of the invention claimed in independent Claim 1 stands patentably distinguishable over the applied reference to Rits (i.e., U.S. Patent No. 6,095,356). As previously mentioned in the responsive communications of April 21, 2003 and of August 11, 2003, Claim 1 claims that the second filter member is *disposed juxtaposedly* to the first filter member. The membrane 22 in U.S. Patent No. 6,095,356 to

Rits is *not disposed juxtaposed* to membrane 26. As further previously mentioned in the responsive communication of April 21, 2003 and of August 11, 2003, Webster's Universal Encyclopedic Dictionary, published by Barnes and Noble Books in 2002 (ISBN 0-7607-2911-5), defines juxtaposed as: "to place side by side", or "adjacent" which means or is defined as "having a common end point or border.....immediately preceding or following."

It is axiomatic that a claim must be read in accordance with the precepts of English grammar. *In re Hyatt*, 708 F. 2d 712, 218 USPQ 195 (Fed. Cir. 1983). Words will be given their ordinary and accustomed meaning unless it appears that the Applicants used them differently. *Envirotech Corp. v. Al George, Inc.*, 730 F.2d 753, 221 USPQ 473 (Fed. Cir. 1984). Applicants have used "juxtaposedly" in accordance with the precepts of English Grammar, and have not used "juxtaposedly" otherwise, meaning that the first filter member has a common point with the second filter member and it immediately precedes or follows the second filter member, as shown in the patent drawings. While "juxtaposedly" is to be given the broadest reasonable interpretation, under *In re Barr, Williams, and Whitmore*, *supra*, "juxtaposedly" is to be accorded the broadest

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reasonable interpretation *consistent with the specification*. Construing "juxtaposedly" in light of the Applicants' specification and the drawings means that Applicants' filters **34** and **36** are disposed "side by side," or "adjacent" which is defined as "having a common end point or border.....immediately preceding or following," with no absorbing intermediate material there between, such as absorbing intermediate material identified in Rits as "24".

As also previously mentioned in the responsive communications of April 21, 2003 and of August 11, 2003, membranes 22 and 26 in Rits are not "disposed juxtaposedly" as shown in Applicants' specification and drawings, and as claimed by Applicants in Claim 1. More specifically, membrane 22 in Rits is not side by side to membrane 26, nor is membrane 22 adjacent to membrane 26 because it does not have a common end point or border, nor does it immediately precede or follow membrane 26. As shown in Fig. 2 of the drawings of Rits, membrane 22 is separated from membrane 26 by an absorbing intermediate material 24. Thus, when "juxtaposedly" is construed in light of Applicants' specification and drawings, independent Claim 1 stands patentably distinct over the applied reference to Rits.

The Examiner is respectfully reminded that to find anticipation of claims, the prior-art embodiments must possess the properties expressly recited in the claims. Property limitations can serve to distinguish claimed subject matter from other products. *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.* 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988). In the embodiment of the invention claimed in independent Claim 1, the limitation "juxtaposedly" serves to distinguish the claimed subject matter of this embodiment of the invention over the product shown in Rits.

The Examiner is also respectfully reminded that a party asserting that a patent claim is anticipated under 35 U.S.C. § 102 "must demonstrate....identity of invention." *Minnesota Mining and Manufacturing Co. v. Johnson & Johnson Orthopedics Inc.*, 976 F.2d 1558, 24 U.S.P.Q. 1321, 1326 (Fed. Cir. 1992). The claimed invention, as described in appropriately construed claims, must be the same as that of the reference in order to anticipate. *Glaverbel Société Anonyme v. Northlake Marketing & Supply Inc.* 45 F.3d 1550, 33 U.S.P.Q.2d 1496, 1498 (Fed. Cir. 1995). When a claimed invention is not

identically disclosed in a reference, and instead requires picking and choosing among a number of different options disclosed by the reference, then the reference does not anticipate. *Mendenhall v. Astec Industries, Inc.*, 13 U.S.P.Q. 2d 1913, 1928 (Tenn. 1988), aff'd, 13 U.S.P.Q. 2d 1956 (Fed. Cir. 1989). Here, the Examiner has picked and choose among a number of different options disclosed by Rits; more specifically, the Examiner has elected to remove or disregard the absorbing intermediate material 24 in Rits. It is axiomatic that any degree of physical difference, however slight, invalidates claims of anticipation." *Ultradent Products Inc. v. Life-Like Cosmetics Inc.*, 39 U.S.P.Q.2d 1969, 1980 (Utah 1996). Here, there is a major difference between the device disclosed by Rits and the embodiment of the invention claimed in independent Claim 1. The specific major difference is that the absorbing intermediate material 24 in Rits prevents filters 22 and 26 from being "juxtaposed" as claimed in independent Claim 1, as defined above and as interpreted in light of Applicants' specification and drawings. An interpretation of the word "juxtaposed" in independent Claim 1 to limit the claimed filters (i.e., filters 34 and 36) to the relationship disclosed in the specification is consistent with the principle that, where

"juxtaposed" may be susceptible to more than one construction, that one interpretation (i.e., the interpretation where there is no absorbing intermediate material 24 between filters 34 and 36) will be adopted which will preserve to the Applicants an embodiment of their actual invention. *Leesona Corporation v. United States, supra.*

Claim 5 Stands Separately Patentable:

With respect to the Examiner's contention that because one of Rits' permeable membranes "has a smaller pore size and is of finer construction and thus more flexible," it is respectfully submitted that flexibility depends not on pore size *per se*, but on the material as well as the *thickness* and *length* of the material. Query? Which would be more flexible, a rubber member with certain pore sizes or a steel member with smaller pore sizes than the rubber member? Query further? Which would be more flexible, a rubber member two feet thick or a steel member with a thickness of 0.02 inches? Not only are material and thickness of material pertinent to flexibility, but length is also pertinent.

In his August 11, 2003 office action the Examiner states that the "Rits reference does not teach two filters with one made of steel and the other made of rubber, but two filters made of PVDF or PTFE, and nylon.....applicants' argument is not pertinent." While PVDF or PTFE and nylon are different materials, Rits teaches nothing concerning the flexibility of these materials. Rits also does not teach or suggest anything concerning the *thickness* and *length* of these materials, all of which would affect flexibility of the materials.

As previously indicated in the responsive communications of April 21, 2003, Col. 2, lines 54-58 of Rits (i.e., "....the lower gas permeable membrane 22 has a pore size in the range of.....to about 1 mm.") does *NOT* teach (as the Examiner is alleging) that the "first filter member has a higher flexibility than the second filter member" as claimed by Applicants in dependent Claim 5 (as well as dependent Claims 32 and 44). Both membrane 22 and membrane 26 in Rits may have the *same* flexibility. Both membrane 22 and membrane 26 in Rits may have a different thickness. With respect to anticipation it is inappropriate to attempt to reconstruct the prior art or otherwise modify it in an attempt to anticipate

structure which is not shown in the prior art. *Harris-Hub Company Inc. v. Lear Siegler, Inc.*, 179 U.S.P.Q. 469, 476 (Ill. 1973). The undersigned attorney respectfully submits that the Examiner is reconstructing or otherwise modifying Rits in an attempt to anticipate structure which is not shown in Rits. Thus, because Rits does not specifically teach or suggest membranes 22 and 26 having any particular flexibility with respect to each other, dependent Claim 5 (as well as Claims 32 and 44 which respectively depend on independent Claims 30 and 9) are patentably distinguishable over Rits.

Claims 2-4 Stand Patentable as Being Dependent on Claim 1:

With respect to the rejection of Claims 2-4, these are dependent Claims which incorporate the allowable subject matter of independent Claim 1; and thus, are now in condition for allowance, as depending on allowable independent Claim 1.

B. In re the Rejection of Claims 9-11, 16-18 and 44 under
35 U.S.C. Section 103(a)

Claim 9 Stands Separately Patentable:

Independent Claim 9 claims *inter alia* "...a second filter member disposed in the opening juxtaposedly to the first filter member." The arguments *supra* pertaining to "juxtaposedly" under "Claim 1 Stands Separately Patentable" are fully incorporated herein by reference thereto to respectfully refute the Examiner's rejections. Claim 9 now stands patentably distinct over the applied references.

Claim 10 Stands Separately Patentable:

Independent Claim 10 claims *inter alia* "...a second filter member juxtaposed to the first filter member...." The arguments *supra* pertaining to "juxtaposedly" under "Claim 1 Stands Separately Patentable" are fully incorporated herein by reference thereto to respectfully refute the Examiner's rejections. Claim 10 now stands patentably distinct over the applied references.

Claim 44 Stands Separately Patentable:

Dependent Claim 44 claims *inter alia* "...said first filter member has a higher flexibility than the second filter member." The arguments *supra* pertaining to "flexibility" under "Claim 5 Stands Separately Patentable" are fully incorporated herein by reference thereto to respectfully refute the Examiner's rejections. Claim 44 now stands patentably distinct over the applied references.

Claims 11, 16-18 Stand Patentable as Being Dependent on

Claim 10:

With respect to the rejection of Claims 11, 16-18 these are dependent Claims which incorporate the allowable subject matter of independent Claim 10; and thus, are now in condition for allowance, as depending on allowable independent Claim 10.

C. In re the Rejection of Claims 13 and 14 under 35 U.S.C.

Section 103(a)

**Claims 13 and 14 Stand Patentable as Being Dependent on
Claim 10:**

With respect to the rejection of Claims 13 and 14, these are dependent Claims which incorporate the allowable subject matter of independent Claim 10; and thus, are now in condition for allowance, as depending on allowable independent Claim 10.

D. In re the Rejection of Claims 25, 26, 30-32, 36-43, 49-50, and 55-56 under 35 U.S.C. § 112, First Paragraph

Claims 25, 26, 30-32, 36-43, 49-50, and 55-56 stand rejected under 35 U.S.C. § 112, first paragraph, because allegedly these claims contain "subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention."

Claims 25, 30, 36, 38, 42, 49 Stand Separately Patentable:

In the Advisory Action of August 18, 2003, the Examiner withdrew his rejection of independent Claim 19 under 35 U.S.C. § 112, first paragraph. Independent Claim 19 claims *inter alia* "...a second filter member disposed in the opening and having the capability of being contacted by the first filter when the first filter is flexed." Thus, the Examiner admits that the first filter may be flexed. The specification (see page 8, lines 21-23) as filed states: "In operation, filter **34** would typically move or flex toward and/or against filter **36**." Applicants respectfully submit that if a filter is flexed, inherently the filter would have a flexed structure as claimed in Claims 25, 30, 36, 38, 42, and 49; and such a claimed flexed structure would NOT be new matter and would not warrant a rejection under 35 U.S.C. § 112, first paragraph. Applicants rely on the following judicial decisions to support the fact that a flexed structure is inherent in the disclosure of the subject patent application: *In re Smythe and Shamos*, 480 F.2d 1376, 178 U.S.P.Q. 279 (C.C.P.A. 1973); *In re Lange*, 644 F.2d 856, 209 U.S.P.Q. 288 (C.C.P.A. 1981); and *Kennecott Corp. v. Kyocera International, Inc.*, 835 F.2d 1419, 5 U.S.P.Q.2d 1194 (Fed. Cir. 1987).

By disclosing a device that inherently performs a function, operates according to a theory, or has an advantage, a patent applicant necessarily discloses the function theory or advantage even though he says nothing concerning it. The application may be later amended to recite the function, theory, or advantage without introducing prohibited new matter. In a case where there is no unpredictability and where a broader concept than that expressly set forth in the specification would naturally occur to one skilled in the art from reading applicant's description, there is no basis for denying applicant claims that recite the broader concept. The alternative places upon patent applicants, the Patent Office, and the public the undue burden of listing (in the case of applicants), reading and examining (in the case of the Patent Office), and printing and storing (in the case of the public) descriptions of the very many structural or functional equivalents of the disclose elements or steps that are already stored in the minds of those skilled in the art, ready for instant recall upon reading the descriptions of specific elements or steps. *In re Smythe and Shamos*, 480 F2d 1376, 178 U.S.P.Q 279, 285 (C.C.P.A. 1973).

A patent application which discloses a device that inherently performs a function, operates according to a theory, or has an advantage, necessarily discloses that function, theory or advantage even though it says nothing concerning it. *In re Lange*, 644 F.2d 856, 209 U.S.P.Q. 288, 295 (C.C.P.A. 1981).

The express description of an inherent property, since not "new matter," can be added to a specification with effect as of the original filing date. The additional description is not that of a new use, but of the existing physical structure of the product. *Kennecott Corp. v. Kyocera International, Inc.*, 835 F.2d 1419, 5 U.S.P.Q.2d 1194 (Fed. Cir. 1987).

By claiming that a filter has a "flexed structure," Applicants are claiming the result of flexing a filter, "the existing physical structure of the product" after being flexed. *Kennecott Corp., supra*. The additional description is not that of a new structure, but the result of a structure being flexed. Therefore, Claims 25, 30, 36, 38, 42, and 49 should stand patentable because the claimed flexed structure would NOT be new matter, and the rejection

under 35 U.S.C. § 112, first paragraph, should be withdrawn or overruled.

Claims 26, 37, 43, 50, 55, and 56 Stand Separately

Patentable:

Claims 26, 37, 43, 50, 55, and 56 claim *inter alia* "...no absorbing material disposed between...." the first and second filter. The Examiner has alleged that such claim limitation of "no absorbing material" disposed between the first and second filter is not supported by the specification, and thus warrants rejection under 35 U.S.C. § 112, first paragraph. Drawings may be relied upon to satisfy the disclosure requirements of 35 U.S.C. § 112. *Ex parte Horton*, 226 U.S.P.Q. 697 (B.P.A.I. 1985). Applicants' drawings clearly show no absorbing material (i.e., the absorbing intermediate material 24 in Rits) between filters **34** and **36**. Therefore, the rejection of Claims 26, 37, 43, 50, 55, and 56 under 35 U.S.C. § 112, first paragraph, should be withdrawn or overruled.

A 112

Claim 32 Stands Separately Patentable:

Dependent Claim 32 claims *inter alia* "...said first filter member has a higher flexibility than the second filter member." The arguments *supra* pertaining to "flexibility" under "Claim 5 Stands Separately Patentable" are fully incorporated herein by reference thereto to respectfully refute the Examiner's rejections. Claim 32 now stands patentable.

Claim 39 Stands Separately Patentable:

Dependent Claim 39 claims *inter alia* "...filter members are juxtaposed with respect to each other." The arguments *supra* pertaining to "juxtaposedly" under "Claim 1 Stands Separately Patentable" are fully incorporated herein by reference thereto to respectfully refute the Examiner's rejections. Claim 39 now stands patentably distinct.

Claim 31 Stands Patentable as Being Dependent on Claim 30:

With respect to the rejection of Claim 31, this dependent Claim incorporates the allowable subject matter of independent Claim 30; and thus, is now in condition for allowance, as depending on allowable independent Claim 30.

Claims 40 and 41 Stand Patentable as Being Dependent on
Claim 37:

With respect to the rejection of Claims 40 and 41, these are dependent Claims which incorporate the allowable subject matter of independent Claim 37; and thus, are now in condition for allowance, as depending on allowable independent Claim 37.

X. Conclusion

Appellants respectfully submit that all pending claims are now in condition for allowance. Appellants respectfully request that the following rejections should be withdrawn or reversed: (i) the rejection of Claims 1-5 under 35 U.S.C. Section 102(b) as being unpatentable over U.S. Patent No. 6,095,356 to Rits; (ii) the rejection of Claims 9-11, 16-18 and 44 under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent No. 5,732,837 to Jones in view of Rits; (iii) the rejection of Claims 13 and 14 under 35 U.S.C. Section 103(a) as being unpatentable over Jones in view of Rits as applied to Claim 10, and further in view of U.S. Patent No. 5,689,895 to Sutherland et al; and (iv) the rejection of Claims 25, 26, 30-32, 36-43, 49-50, and 55-56 under 35 U.S.C. 112, first paragraph, because allegedly these claims contain "subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that

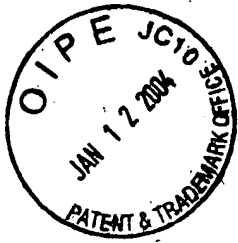
the inventor(s), at the time the application was filed, had possession of the claimed invention."

Appellants respectfully request an earlier Notice of Allowance after the June 10, 2003 Final Rejection by the Examiner has been withdrawn or reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John W. Carpenter", is written over a horizontal line.

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Appendix, Claims on Appeal

1. A device for holding substances during drying comprising a flask having a structure defining an opening a first filter member disposed in the opening; and a second filter member disposed in the opening juxtaposedly to the first filter member.

2. The device of Claim 1 wherein said first filter member comprises at least one aperture sized to preclude the passing of bacteria there through.

3. The device of Claim 2 wherein said first filter member comprises a plurality of apertures having an average aperture opening ranging from about 0.10 μm to about 0.65 μm .

4. The device of Claim 1 additionally comprising a retainer ring engaged to the flask for retaining the first and second filter members in the opening.

5. The device of Claim 1 wherein said first filter member has a higher flexibility than the second filter member.

9. A freeze-drying assembly comprising a freeze-drying apparatus; and a device disposed in said apparatus for holding substances during freeze-drying, said device comprising a flask having a structure defining an opening, a first filter member disposed in the opening, (and a second filter member disposed in the opening juxtaposedly to the first filter member.)

10. A method for processing a substance under sterile conditions comprising disposing a substance in a flask; positioning the flask in a drying apparatus; and passing a drying medium through a first filter member (and through a second filter member juxtaposed to the first filter member) for drying the substance.

11. The method of Claim 10 additionally comprising rehydrating the dried substance.

13. The method of Claim 10 additionally comprising contacting the substance with a temperature-conductive member for monitoring the temperature of the substance.

14. The method of Claim 13 additionally comprising coupling a thermocouple to the temperature-conductive member.

16. The method of Claim 10 additionally comprising exposing the flask to water vapor.

17. The method of Claim 10 wherein said flask comprises a transparent structure.

18. The method of Claim 17 additionally comprising viewing the substance through the transparent structure.

25. The device of Claim 19 wherein said first filter member includes a flexed structure in contact with the second filter member.

26. The device of Claim 19 wherein said first filter member and said second filter member have no absorbing material disposed between them.

30. A device for holding substances during drying comprising a flask having a structure defining an opening; a first filter member disposed over the opening and having a flexed structure; and a second filter member disposed over the opening and in contact with the flexed structure.

31. The device of Claim 30 additionally comprising a retainer ring engaged to the flask and having an inwardly protruding lip extending over the second filter for

retaining the first and second filter members over the opening of the flasks.

32. The device of Claim 30 wherein said first filter member has a higher flexibility than the second filter member.

36. The device of Claim 30 wherein said first filter member and said second filter member are juxtaposed with respect to each other and have no absorbing material disposed therebetween, and said second filter member is in contact with the flexed structure of the first filter member.

37. A device for holding substances during drying comprising a flask having a structure defining an opening; a first filter member disposed in the opening; and a second filter member disposed in the opening and having no absorbing material positioned between the first and second filter members.

38. The device of Claim 37 wherein said first filter member comprises a flexed structure in contact with the second filter member.

39. The device of Claim 37 wherein said first and second filter members are juxtaposed with respect to each other.

40. The device of Claim 37 additionally comprising at least one temperature-conductive member passing through the flask.

41. The device of Claim 39 additionally comprising at least one temperature-conductive member passing through the flask.

42. The device of Claim 1 wherein said first filter member includes a flexed structure in contact with the second filter member.

43. The device of Claim 1 wherein said first filter member and said second filter member have no absorbing material disposed between them.

44. The freeze-drying assembly of Claim 9 wherein said first filter member has a higher flexibility than the second filter member.

49. The freeze-drying assembly of Claim 9 wherein said first filter member includes a flexed structure in contact with the second filter member.

50. The freeze-drying assembly of Claim 9 wherein said first filter member and said second filter member have no absorbing material disposed between them.

55. The method of Claim 51 wherein said first filter member and said second filter member have no absorbing material disposed between them.

56. The method of Claim 10 wherein said first filter member and said second filter member have no absorbing material disposed between them.